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# NATO Agreement on the Communication of Technical Information for Defense Purposes†

## I. Introduction

On 19 October 1970 the Permanent Representatives of the North Atlantic Treaty Organization member nations[1] at the NATO Headquarters in Brussels, signed[2] a "NATO Agreement on the Communication of Technical Information for Defense Purposes."[3] The Agreement is broadly intended to encourage the flow of technical information for defense purposes[4] among NATO Governments and Organizations,[5] by providing

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†The opinions herein are those of the author and do not necessarily express the policies of the Department of the Army.

[1]The Agreement was drafted by the NATO Working Group on Industrial Property and submitted to the North Atlantic Council at its meeting of 14 May 1968. The final text of the Agreement, dated 19 October 1970, the date on which the last signature was obtained, is contained in Annex I to NATO Document C-M(68) 11 dated 8 April 1968.

[2]Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Italy, Luxembourg, the Netherlands, Norway, Portugal, Turkey, the United Kingdom and the United States. Although Iceland is also a member nation, it has no defense establishment and therefore has not participated in this Agreement.

[3]NATO Note AC/94-N/73 dated 22 October 1970.

[4]The term "for defense purposes" is defined in Article I of the Agreement, as "means for strengthening the individual or collective capabilities of the parties to the North Atlantic Treaty either under national, bilateral or in the implementation of NATO research, development, production or logistics projects."

[5]The term "NATO Organization" is defined as "the North Atlantic Council and any subsidiary civilian or military body, including International Military Headquarters, to which apply the provisions of either the Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff: (Entered into force for the United States 18 May 1954, 5 UST 1087; TIAS 2992; 200 UNTS 3.) signed in Ottawa on the 20th of September 1951, or the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty (Entered into force for the United States 10 April 1954. 5 UST 870; TIAS 2978; 200 UNTS 340.) signed in Paris on the 29th of August, 1952."

means for the protection of proprietary technical information[6] against unauthorized use or disclosure by or on behalf of a recipient NATO Government or Organization.

The Agreement and its Implementing Procedures[7] set forth channels for transmission of the information; criteria for properly marking such information to indicate the source and ownership of the proprietary information; restrictions on the use or further disclosure of the information by the recipient; measures to be taken to safeguard the information in accordance with those restrictions; means for obtaining modification of those restrictions, and means for establishing advisory committees to investigate and make recommendations concerning claims for damages resulting from alleged improper use or disclosure of the technical information.

In accordance with NATO procedures, agreements of this type must be signed by the Permanent Representative of each member nation. The agreement must then be individually approved or ratified by the member nations. The Agreement does not become effective for a country until that country has deposited its instruments of approval or ratification with the United States Department of State.[8] To date, the Agreement has been approved or ratified by Canada[9] (20 October 1970) and the United States[10] (8 January 1971). Accordingly, the provisions of the Agreement became effective between Canada and the United States on 7 February 1971. The North Atlantic Council by Resolution of 24 March 1971 decided that the provisions of the Agreement would apply between NATO Organizations, and between NATO Organizations and Canada and the United States from 30 April 1971.[11]

Accordingly, at the present time the terms of the Agreement extend only to Canada, the United States, and NATO Organizations. The Agreement will apply to other NATO nations thirty days after they have deposited notice of their approval or ratification with the U.S. Department of State. Since ratification by some countries may require legislative action, some

[6]The term "proprietary technical information" is defined as "Information which is technical in character, sufficiently explicit for use and has utility in industry, and which is known only to the owner and persons in privity with him and therefore not available to the public. Proprietary technical information may include, for example, inventions, drawings, know-how and data."

[7]NATO Document AC/259-D/47; AC/94-D/150 and dated 22 May 1968.

[8]Article VIII of the Agreement.

[9]Corrigendum to NATO Note AC/94-N/73 dated 20 January 1971.

[10]NATO Document AC/259-D/176; AC/94-D/202 dated 21 January 1971.

[11]NATO Document AC/259-D/48 (Revised); AC/94-D/152 (Revised) dated 6 April 1971.

considerable time may elapse before the Agreement becomes effective for all Signatory Governments.

Details of the procedures for implementing the NATO Agreement were considered more appropriately incorporated in a second document which, although requiring the unanimous approval of the North Atlantic Council, would not also require national ratification or approval. Thus, the Implementing Procedures can more readily be amended from time to time to fit the needs of the Signatory Governments. Accordingly, pursuant to Article IV of the NATO Agreement, Implementing Procedures were developed by the NATO Working Group on Industrial Property[12] and approved by the North Atlantic Council,[13] effective 1 January 1971.

The procedures are applicable to each signatory party to the Agreement, or NATO Organization, at the time the Agreement comes into force for that party or organization. Since the Agreement entered into force for Canada and the United States on 7 February 1971, these procedures also entered into force on that date for these two countries. The Agreement as well as the Implementing Procedures will become effective for other NATO countries and organizations thirty days after deposit by each country or organization of its instruments of ratification or approval with the Government of the United States.

This NATO multilateral agreement represents the first formal, general arrangement between the United States and Canada for the exchange and protection of technical information. There are, of course, numerous specific cooperative project agreements with Canada entered into under the "United States-Canadian Defence Production Sharing Program,"[14] and other cooperative arrangements. None of these agreements, however, nor the projects entered into under them, have the breadth of scope of the NATO multilateral. This Agreement also represents the first formal agreement for the communication and protection of technical information between the United States and the various NATO Organizations.

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[12]The NATO Working Group on Industrial Property was established in 1955 and is currently under the aegis of the Conference of National Armaments Directors in accordance with the provisions of document C-M(66)33 (Revised). The Group, currently chaired by Mr. Solteris Tsambiras of the International Staff is composed of national representatives designated in their capacity as experts in industrial property. The Terms of Reference of the Working Group, AC/94-D/115 (Revised) dated 29 June 1966 charge the Group with providing to NATO, and its military and civilian bodies, advice and assistance with respect to inventions, patents, utility models, designs, know-how, trademarks, industrial secrets and the rights thereto.

[13]NATO Document AC/259-D/47 (Revised); AC/94-D/150 (Revised) of 26 January 1971.

[14]*See* the Armed Services Procurement Regulation, Section 6-507 "Memorandum of Understanding in the Field of Cooperative Development between the United States Department of Defense and the Canadian Department of Defence Production."

## II Background

Since the mid 1950s the North Atlantic Treaty Organization and its member nations have been concerned about the protection of proprietary technical information, communicated between member nations, particularly in the course of the numerous meetings of technical experts and in the operation and dissemination of technical information through NATO technical organizations. To facilitate and encourage the flow of technical information the Working Group on Industrial Property was established in 1955 to inquire into means of protecting proprietary technical information belonging to private firms or individuals. The Working Group on Industrial Property produced a set of rules for this purpose in 1956.

These rules, incorporated in a NATO publication entitled "General Guidance for NATO Armaments Committee Groups"[15] set out principles for guiding national representatives, industrial experts, members of the NATO International Staff and representatives of the NATO Military Authorities in safeguarding rights of ownership in connection with the disclosure of technical information.

These guidelines emphasized the value of proprietary data and cautioned against unauthorized disclosure. The guidelines also urged that adequate records of technical meetings be kept in order to be able to establish the extent to which technical information was disclosed and provide a clear indication of the conditions and restrictions made and accepted on the disclosure and use of the technical information. No adequate means were provided, however, for investigating or settling claims for the unauthorized use or disclosure of proprietary technical information.

Accordingly, the Working Group on Industrial Property drafted, and the North Atlantic Council adopted, a "Resolution on Provisions for Setting up an Ad Hoc Committee in the Event of Damage from Disclosure or Use of Inventions or Technical Information Within the Framework of the North Atlantic Treaty Organization."[16] As its lengthy title indicates, this Resolution provided for the establishment of an ad hoc committee of representatives of concerned governments, and representatives of the NATO International Staff, to investigate all claims of alleged damages incurred by the unauthorized disclosure or use of proprietary information; to examine all documents and evidence available and submit a report to the

[15]NATO Document AC/74-D/860 (Revised) dated 17 June 1964.

[16]NATO Document C-M(60)60 dated 2 June 1960 "Resolution on Provisions for setting up an Ad Hoc Committee in the event of damage from disclosure or use of inventions or technical information within the framework of the North Atlantic Treaty Organization" adopted by the North Atlantic Council on 1 June 1960.

governments on the existence, origin and other relevant circumstances resulting from disclosure or use of information during or following meetings of technical or scientific groups of, or sponsored by NATO.

Although the Guidelines for NATO Experts and the Council Resolution were sufficient to meet the exigencies of the day, it soon became apparent that further protection was needed to encourage greater flow of technical information between NATO Governments, not only in the meetings of NATO technical and scientific groups but directly between governments and/or NATO Organizations in the fulfillment of international cooperative data exchange programs, cooperative research and development projects and coproduction programs.

In view of the expanded work performed by NATO technical organizations, such as the SHAPE Technical Centre and the SACLANT Antisubmarine Warfare Research Centre, it was felt that such organizations should also be covered in any NATO multilateral agreement. Also, it had been found that in the negotiation of NATO common production programs, the absence of a multilateral agreement on the communication and protection of technical information, necessitated a case-by-case consideration of the problem and resulted in the inevitable variety of solutions arrived at only after long delay.

The establishment of a system applicable within the framework of NATO and which takes special account of the particular nature of NATO Organizations, would make the communication and use of proprietary technical information for defense purposes easier, and would thus permit a progressive enlargement of the exchange of technical information within NATO.

In drafting the Agreement, the Working Group was guided by the following principles:

> a. The communication of technical information among NATO members and Organizations should be encouraged, particularly in the form of cooperative research, development or production programs.
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> b. The rights of the owners of proprietary technical information vis-à-vis any NATO Government or Organization should be safeguarded from the unauthorized use or disclosure of the proprietary information.
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> c. In order to be entitled to protection, the technical information must be communicated through appropriate government channels, and carry with it certain minimum information concerning the proprietary nature of the material and the conditions under which it could, or could not, be used or disclosed.
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> d. The owner of the proprietary information should be compensated when he suffers damages from the use or disclosure of the information without his authorization or in violation of the conditions under which it was communicated to a Recipient.
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> e. There should be available a procedure of amicable settlement of

claims including a means for investigating allegations of unauthorized use or disclosure and establishing a basis for a solution satisfactory to the parties involved and which would be more rapid and less expensive than recourse to the courts.

f. The obligation for compensation should rest with the Recipient responsible for the unauthorized communication or use. When the Recipient is a government, compensation for the damage should be made in accordance with its laws and regulations. When the Recipient is a NATO Organization, the law to be applied should be, unless otherwise agreed by the parties concerned, the one in force in the country where the headquarters of this organization are located.

g. If the Government or Organization of Origin itself compensates the owner, the amount to be paid by the Recipient should not be affected by the amount of compensation paid by the Government or Organization of Origin unless otherwise agreed.

h. To the maximum extent possible, the provision of any agreement should require no change, however minor, to the laws of member nations.

i. The agreement should avoid any interference with internal measures to be taken by either a Government or Organization of Origin, or the Recipient when transmitting to private firms or to individuals, proprietary technical information communicated under the agreement. It is incumbent upon each Government or Organization to take any measures it deems necessary within the framework of its own responsibilities.

## III. Substance of the Agreement and Implementing Procedures

### *A. General*

The NATO Agreement was negotiated pursuant to Article III of the North Atlantic Treaty,[17] which provides that the parties will maintain and develop their individual and collective capacity to resist armed attack by means of self-help and mutual assistance. It was considered that such capacity could be developed inter alia, by encouraging the communication among Government Parties and NATO Organizations of proprietary technical information to assist in defense research, development and production of military equipment and material. It was further considered that in order to encourage such communication effectively, the rights of owners of proprietary technical information thus communicated should be recognized and protected.

The NATO Agreement and its Implementing Procedures apply whenever technical information is communicated for defense purposes by one Government or Organization of Origin[18] to one or more Recipients[19] as

[17]North Atlantic Treaty signed at Washington, D.C. 4 April 1949, entered into force for the United States 24 August 1949; 63 Stat. 2241; TIAS 1964; 34 UNTS 243; 4 Bevans 828.

[18]The term "Government or Organization of Origin" is defined as "the Government Party to this Agreement or NATO Organization first communicating technical information as being proprietary."

[19]The term "Recipient" is defined as "any government party to this Agreement or any

proprietary. Technical information relating to atomic energy is specifically excluded in the Agreement, and the Implementing Procedures state that the communication of copies of patent applications placed under a secrecy order is expressly excluded from the definition of a "communication" within the meaning of the Agreement, since such transactions are provided for in the "NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for which Applications for Patents have been made."[20]

As previously stated, the information must be communicated between governments or NATO Organizations for defense purposes whether the information is proprietary to the government, organization or to a private entity. The Agreement does not cover the communication of proprietary technical information between individuals and the use which might result from such communication, whether those transactions are effectuated directly between those concerned or through the governments, when the governmental intervention is limited to operations of control or transmission of the technical information through secure channels. The Agreement does not cover the communication of types of information other than technical information, and does not apply to information communicated for other than defense purposes.

The Recipient of information communicated to it under the terms of the Agreement, is responsible for safeguarding this information as proprietary technical information which has been disclosed in confidence, and may not use it other than "for information purposes" unless express consent is given to the contrary. The Recipient must treat such information in accordance with any conditions imposed, and take appropriate steps compatible with those conditions to prevent the information from being communicated to any one, published or used without authorization, or treated in any manner likely to cause damage to the owner. The term "for information purposes" is defined as meaning for the purpose of assisting in the evaluation of the technical information for defense interests only, and without prejudice to any rights of the owner. The term does not include the use, publication or disclosure, in whole or in part, for purposes of manufacture.

On the other hand, the owner of the information and/or the Government of Origin must take appropriate steps to safeguard the information. In

NATO Organization receiving technical information communicated as proprietary, either directly by the Government or Organization of Origin or through another Recipient."

[20]Done at Paris 21 September 1960; entered into force for the United States 12 January 1961; 12 UST 43; TIAS 4672; 394 UNTS 3. Belgium, Denmark, France, the Federal Republic of Germany, Greece, Luxembourg, Norway, Portugal, Turkey, the United Kingdom and the United States are parties.

order to be properly protectable, any technical information communicated under the Agreement must include, or be accompanied by, a legend securely attached in a conspicuous place. As a minimum, the legend must state that the information is proprietary, that it is communicated in confidence for defense purposes, and state any other specific purpose for which the information is communicated. Whenever feasible, the legend should also include an identification of the ownership of the information; the Government or Organization of Origin; identification of all Recipients of the same information; identification of the specific portions of communicated information claimed as proprietary, where all of the information communicated is not proprietary; and the conditions under which part or all of the information may be published or further disclosed or used by other parties, *e.g.*, with the written consent of the owner.

Where use of a legend is not practicable, as for example, when the information is communicated orally or visually, the same information as would otherwise have been contained in a legend, must be effectively communicated to the Recipient orally, visually, or in some other manner. Any Recipient accepting information under such circumstances must fully identify it and the conditions under which it was communicated in an acknowledgment which is satisfactory to the transmitter.

The Implementing Procedures must also take into account the possibility that a restrictive marking accompanying a piece of proprietary information may become detached or destroyed in transit. Accordingly, when information is received without a legend, but under circumstances giving rise to the belief that it was communicated under the Agreement, the Recipient is required to make sure that a restrictive legend has not become dissociated from the information before he uses or makes further disclosure of the information.

*B. Modification of Restrictions*

If a Recipient desires to obtain modification of any restrictions on the use or disclosure of information communicated under the Agreement, for example, permission to use it for other than evaluation purposes or to disclose it to contractors or third countries, he must make such a request of the Government or Organization of Origin, or with the latter's consent, directly of the owner of the information. The Government or Organization of Origin will assist the Recipient in obtaining authorization for such extended use or communication of the information. In the event further dissemination of technical information is authorized, the Recipient is re-

sponsible for ensuring that the legend and any other conditions relating to the use and disclosure of the information is passed on to the next Recipient.

Recognition is given to the fact that information which is allegedly proprietary may in fact be already known to the public, be readily obtainable by the Recipient from other sources, or be known to the Recipient through research previously conducted by the Recipient's laboratories or contractors. Accordingly, provision is made that if a Recipient ascertains that any part of the technical information communicated to it as proprietary was, at the time of the communication, already in its possession, or was then or at any time becomes available to the public, the Recipient shall, so far as security requirements permit, notify the Government or Organization of Origin of that fact as soon as possible, and if necessary make any appropriate arrangements with the latter for continuation of confidence, for maintenance of defense security and for return of the documents. Disputes in this area would be settled in the course of making such "appropriate arrangements" or would be considered by the Advisory Committee set up by other sections of the Agreement.

*C. Claims for Damages*

In accordance with the Agreement, a Government or Organization of Origin and the Recipient will keep the other informed of any claims for damages, which have been referred to them under the Agreement and in which the other party is involved.

The Agreement provides that if the owner of proprietary technical information which has been communicated for defense purposes suffers damage by reason of the unauthorized disclosure or use of his information by either a Recipient or anyone to whom the recipient has disclosed the information, that Recipient shall compensate the owner. If the Recipient is a government, compensation shall be made in conformity with the national laws of the Recipient. If the Recipient is a NATO Organization, the compensation shall be made in conformity with the laws of the country in which the headquarters of this Organization is located unless the parties agree otherwise.

The compensation may be paid either directly to the owner of the information or to the Government or Organization of Origin. The Government of Origin may, of course, itself compensate the owner of the information in accordance with its own national procedures and laws. The United States, for example, could make compensation under the Foreign

Assistance Act of 1961, as amended,[21] prior to payment, if any, by the Recipient alleged to have caused the damage to the owner of the technical information. In any such case, the amount of compensation to be paid by the Recipient will not be influenced by the amount of compensation paid by the Government of Origin, and the compensation for damages will be paid by the Recipient to the Government of Origin. Also, nothing in these provisions regarding compensation may act to impair any rights which the injured owner may have against any Government or NATO Organization.

*D. Advisory Committee*

In the event of a dispute or inability to arrive at the settlement of a claim to the mutual satisfaction of all parties concerned, a Government Party to the Agreement or a NATO Organization concerned may request the Secretary General of NATO to establish an Advisory Committee, to investigate and examine evidence and report to the parties concerned on the origin, nature and scope of any damage. The term "parties concerned" is interpreted to mean only involved governments and organizations. It does not extend to private parties who may have an interest. It is, however, within the discretion of the governments and organizations involved to release the report to private parties within the limits of security requirements.

As the name indicates, the Committee is purely advisory in nature. It is an ad hoc committee established solely for consideration of a specific case, and as a rule membership will consist only of representatives of the governments or organizations directly concerned with the case. Where appropriate, however, the Committee may request the Secretary General of the North Atlantic Treaty Organization to designate a member of the International Staff to be a member of the Committee as an observer or as a representative of the Secretary General. The Committee can only be established at the request of a Government or Organization of Origin and its effectiveness depends entirely on the desire of the parties to cooperate to achieve an equitable solution. The owner of the information alleged to be compromised may not initiate establishment of the Committee directly but may do so only through his government or NATO Organization.

[21] Foreign Assistance Act of 1961 as amended 4 September 1961. 22 USC 2356 (formerly the Mutual Security Acts of 1951 and 1954). The Act provides for a remedy for the owner of proprietary information by suit or by administrative settlement of a claim, whenever in connection with the furnishing of foreign assistance under this Act, information which is protected by law and held by the United States Government subject to restrictions imposed by the owner, is disclosed by the U.S. Government or any of its officers, employees, or agents in violation of such restrictions.

The Government or Organization of Origin desiring to establish an Advisory Committee, will make such a request of the Secretary General of NATO and at the same time furnish the Secretary General a statement of facts concerning any alleged damages. In the interest of expediting resolution of the problem, this statement of facts should be as complete as possible. The submission of additional facts at a later stage in the deliberations of the Advisory Committee, however, is not precluded.

The Secretary General of NATO is required to forward any request for establishment of an Advisory Committee, together with copies of the statement of facts, to any other governments or organizations involved in the case and request their agreement to the establishment of the Committee. Membership of an Advisory Committee is intended to comprise only representatives of the government or organizations directly involved in the case. It is anticipated, however, that a member of the NATO International Staff will, at the request of the Committee, attend its meetings either as an observer, or as a member of the Committee representing the Secretary General. Private individuals or representatives of corporate bodies may not be members of the Committee and may not attend or appear before the Committee except on the consent of Committee members.

Further, Committee members are prohibited from acting in any way whatsoever as proponents for any private persons, individuals or corporate bodies. At the request of the Committee, the Secretary General is authorized to provide a secretariat to the Committee under agreed conditions regarding expense. The central location of NATO Headquarters in Brussels, the availability of a skilled multi-lingual administrative staff and other facilities make it probable that meetings of an Advisory Committee will be conducted at that Headquarters. The Committee may either elect a Chairman from its own members or as is more probable request the Secretary General to appoint a member of the International Staff to be the Chairman.

The scope and thoroughness of the investigation is at the discretion of the Advisory Committee. It may restrict itself to consideration of documentary or other evidence furnished to it by concerned governments and organizations, or it may request the appearance of the injured party or any other persons it deems necessary for its investigation. It will normally consider all documents and evidence available concerning the original communication of the information, the restrictions imposed on its use or disclosure, the rights of the alleged owner to the information, and the nature and scope of the alleged damage to the owner. Any necessary additional investigation will be made through national or NATO authorities.

Upon completion of the investigation, the Advisory Committee will submit a report of its findings on the existence, origin, nature and scope of any damage incurred by the owner of the information. This report is intended for the benefit of the parties involved in the transaction, and unless otherwise decided by the Committee, shall, together with its discussions, records, and documents, be maintained in confidence, only NATO and national authorities concerned having access to them. Also, it should be noted that no report, conclusions, or other action of the Committee is binding on the parties involved in the transaction. Further, nothing in the Agreement or Implementing Procedures is to be construed as limiting any defense available to a Recipient, in any disagreement resulting from any communication of technical information.

*E. Security Provisions*

The Implementing Procedures provide for the transmission of classified information only through channels approved by the government parties involved in the communication or receipt of such information. A list of the titles and addresses of the authorized national services is attached to the Procedures as Annex A. The security classification equivalents of the various countries are reproduced in Annex B of the Procedures, and provision is made for the notification of the Recipients of any changes concerning the grade of security classification by the Government or Organization of Origin. As previously mentioned, the communication of information regarding atomic energy is specifically excluded from the Agreement.

*F. Revision of the Procedures*

Although no specific provision is made for revision of the Agreement, it could of course be accomplished by unanimous concurrence of the Parties which have ratified the Agreement. Provision has been made, however, for revision of the Implementing Procedures by the relevant NATO Working Group, presently the NATO Working Group on Industrial Property. The procedures are to be examined for possible revision at the request of any Signatory Party to the Agreement. Revised procedures are to be submitted to the North Atlantic Council and will be applicable to signatory parties and NATO Organizations for whom the Agreement is already in force, thirty days after approval by that Council.

*G. Miscellaneous Provisions*

Other provisions of the NATO Agreement define further terms of im-

portance; provide for the development of procedures for the implementation of the Agreement and set forth administrative procedures for national ratification, or withdrawal from the Agreement by NATO Governments or Organizations. Any party may withdraw one year after notice of denunciation has been given to the Government of the United States. This denunciation does not affect any obligations already contracted, or the rights or prerogatives previously acquired by parties, and will take place automatically upon expiry of the one-year period following the notification to the Government of the United States.

Finally, provision is made that the Agreement shall not affect national or NATO security commitments; shall not affect existing or new agreements of the same type entered into by the participating governments; and shall not affect the NATO agreement on the mutual safeguarding of secrecy of inventions.

## IV. Comparison With U.S. Bilateral Agreements

During the 1950s the United States entered into bilateral agreements with fifteen NATO and non-NATO governments, to fix the relationships of the contracting governments concerning the exchange and protection of patents and technical information for defense purposes. These bilateral agreements titled "Interchange of Patent Rights and Technical Information for Defense Purposes,"[22] and perhaps better known as the Patent Interchange Agreements, were intended to facilitate and expedite the interchange of patent rights and technical information. Although there is a certain amount of overlapping in the coverage of the NATO Multi-lateral Agreement and the existing U.S. bilateral agreements, in that each is

[22]The United States has entered into bilateral agreements to facilitate the interchange of patent rights and technical information for defense purposes with all NATO countries except Canada, Iceland and Luxembourg. *Belgium*: signed at Brussels 12 October 1954; entered into force 12 October 1954; 5 UST 2318; TIAS 3093; 202 UNTS 289. *Denmark*: signed at Copenhagen 19 February 1960; entered into force 19 February 1960; 11 UST 148; TIAS 4423; 354 UNTS 151. *Federal Republic of Germany*: signed at Bonn 4 January 1956; entered into force 4 January 1956; 7 UST 45; TIAS 3478; 268 UNTS 143. *France*: signed at Paris 12 March 1957; entered into force 12 March 1957; 8 UST 353; TIAS 3782; 279 UNTS 275. *Greece*: signed at Athens 16 June 1955; entered into force 16 June 1955; 6 UST 2173; TIAS 3286; 262 UNTS 137. *Italy*: signed at Rome 3 October 1952; entered into force provisionally 3 October 1952; definitely 16 December 1960; 12 UST 189; TIAS 4693. *Netherlands:* signed at The Hague 29 April 1955; entered into force provisionally 29 April 1955; definitely 13 July 1955; 6 UST 2187; TIAS 3287; 219 UNTS 105. *Norway*: signed at Oslo 6 April 1955; entered into force 6 April 1955; 6 UST 799; TIAS 3226; 269 UNTS 65. *Portugal*: signed at Lisbon 31 October 1960; entered into force 31 October 1960; 11 UST 2314; TIAS 4608; 394 UNTS 127. *Turkey*: signed at Ankara 18 May 1956; entered into force 2 April 1957; 8 UST 597; TIAS 3809; 283 UNTS 167. *United Kingdom:* signed at London 19 January 1953; entered into force 19 January 1953; 4 UST 150; TIAS 2773; 161 UNTS 3.

concerned with the international exchange of technical information and rights thereto between the signatory countries, there are several important distinctions which should be noted.

The NATO Agreement, for the first time, provides for the exchange of technical information among all of the NATO countries, rather than merely between the United States and one of the NATO countries. Although there are in existence a few bilateral agreements between NATO countries other than the United States, this multi-lateral Agreement marks the first time that any NATO country can communicate technical information to any other NATO country which has ratified the Agreement and be assured that it is properly protected. Also the NATO Agreement, for the first time covers the exchange of technical information between NATO countries and NATO Organizations or from one NATO Organization to another.

The multi-lateral Agreement concerns only the exchange of technical information among the Signatory Governments and NATO Organizations for defense purposes. It does not cover the exchange of technical information for purposes other than defense, nor does it cover the exchange of technical information between private parties, or between private parties and foreign governments and international organizations for any purpose.

Although the information exchanged under the multi-lateral Agreement may be either privately owned or the property of a Government or NATO Organization, to be protectable under the agreement the information must be exchanged between member governments or organizations. Information exchanged between private citizens or entities of one country with those of another country or its government must otherwise be protected either by private agreement or by the U.S. bilateral agreement.

The multi-lateral Agreement does not provide for the protection of patented information. In view of the fact that all NATO countries already provide sufficient means for an aggrieved patent owner to obtain recourse for the infringement of his patent, it was considered unnecessary to provide additional protection under the multi-lateral Agreement. The multi-lateral will, however, protect technical information related to but not available in a patent such as manufacturing drawings, etc.

Protection is thus afforded only to unpatented proprietary technical information transfered under stated conditions from one signatory Government or NATO Organization to another. It should also be noted that the multilateral makes no provision equivalent to that in the U.S. bi-laterals, by which one Signatory Government is entitled to free use of patents owned or controlled by another Signatory Government.

A further distinction between the U.S. bi-laterals and the NATO mul-

ti-lateral, lies in the fact that technical information may be communicated by the originating government, to as many other NATO governments as the occasion warrants, and that in each case the information will be handled and protected in the same manner. This will permit the participation of a number of NATO governments in any particular project, and the cross communication of technical information related to or developed under a cooperative project.

In the same vein it should be noted that under the NATO Agreement, an Originating Party may communicate information to another NATO Organization or Government which in turn may, if permitted by the owner, further communicate the information to a third NATO Government or Organization. The bi-laterals provide for a standing Technical Property Committee to consider, render advice and make recommendations on matters relating to the subject of the Agreement. On the other hand, the NATO multi-lateral provides for the establishment of ad hoc Advisory Committees whose task is limited to the investigation, examination of evidence and submission of reports to the parties concerned on the origin, nature and scope of any damage arising from transactions under Agreement.

As a final distinction, it may be pointed out that Article IV of the NATO Agreement provides for the development of procedures for the implementation of the Agreement. Procedures have accordingly been developed and approved by the North Atlantic Council. These Implementing Procedures set forth in some detail the conditions under which information may be communicated and used, means whereby restrictions on the use of information by the recipient or its contractors may be modified, and the operation of the Advisory Committees. Provision is also made for the revision of the Implementing Procedures, a procedure which, although requiring the approval of the North Atlantic Council, does not require ratification by each of the signatory governments.

## V. Comparison of the NATO Multilateral Agreement With a Typical United States Bilateral Agreement

| NATO MULTI-LATERAL AGREEMENT | US BI-LATERAL AGREEMENT |
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| *NATO Agreement on the Communication of Technical Information for Defense Purposes*<br>(This Agreement was signed by the Permanent Representatives to NATO of all member nations on 19 October 1970. It will enter into force for each Signatory Party upon ratification or approval in accordance with the provisions of Article VIII A. It will enter into effect for NATO Organizations upon resolution of the North Atlantic Council in accordance with Article VIII B.) | *Agreement to Facilitate Interchange of Patent Rights and Technical Information for Defense Purposes*[23]<br>(Agreements of this type were entered into between the United States and each of the NATO Governments except Canada, Iceland and Luxembourg between 1952 and 1960. The following model agreement is almost identically the same as those entered into with Denmark and Portugal. Each of the agreements with other NATO countries vary from the others, in one or more articles. They all, however, contain the same basic provisions. |
| *Preamble:*<br>The governments of Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Italy, Luxembourg, the Netherlands, Norway, Portugal, Turkey, the United Kingdom and the United States of America:<br>Parties to the North Atlantic Treaty signed in Washington on 4th April, 1949;<br>Considering that Article III of | *Preamble:*<br>The Government of the United States of America and the government of _____, having agreed in the mutual defense assistance agreement signed in Washington on _____, to negotiate, upon the request of either of them, appropriate arrangements between them respecting patents and technical information:<br>Desiring generally to assist in the |

[23]A detailed study of these U.S. bilateral agreements is contained in "Patents and Technical Information Agreements"—a Study of the Subcommittee on Patents, Trademarks and Copyrights of the Committee on the Judiciary, United States Senate, 86th Congress, 2d Session, pursuant to S. Res. 240, Study No. 24.

NATO MULTI-LATERAL AGREEMENT (Cont'd.)

the North Atlantic Treaty provides that the parties will maintain and develop their individual and collective capacity to resist armed attack by means of self-help and mutual assistance;

Considering that such capacity could be developed inter alia by the communication among government parties and NATO organizations of proprietary technical information to assist in defence research, development and production of military equipment and material:

Considering that rights of owners of the proprietary technical information thus communicated should be recognized and protected;

Have agreed on the following provisions:

(Note: The NATO Agreement does not deal with the exchange of patent rights, nor do the signatory parties agree to facilitate the interchange of technical information.)

(There is no article in the NATO agreement which is the equivalent of Article I of the bi-laterals. The NATO agreement concerns only the exchange of technical information among the signatory governments and NATO organizations. It does not involve the exchange of information between private persons or entities.

(There is no commitment on the part of signatory governments to en-

US BI-LATERAL AGREEMENT (Cont'd.)

production of equipment and materials for defense, by facilitating and expediting the interchange of patent rights and technical information; and

Acknowledging that the right of private owners of patents and technical information should be fully recognized and protected in accordance with the law applicable to such patents and technical information;

Have agreed as follows:

ARTICLE I

Each contracting government shall, whenever practicable without undue limitation of, or impediment to, defense production, facilitate the use of patent rights, and encourage the flow and use of privately owned technical information, as defined in article VIII, for defense purposes—

(a) Through the medium of any existing commercial relationships between the owner of such patent rights and technical information

NATO-MULTI-LATERAL AGREEMENT (Cont'd.)

courage the flow of technical information other than through government channels. Although the information so exchanged may be privately owned, it must be exchanged between member governments or organizations in order to be protectable under the agreement.

(The owners of information exchanged between private sources in one country and private or government users of another country, must seek protection either through private agreement or under the US bi-laterals.)

ARTICLE I

For the purpose of this agreement:

(a) The term "for defence purposes" means for strengthening the individual or collective defence capabilities of the parties to the North Atlantic Treaty either under national, bilateral or multilateral programmes, or in the implementation of NATO research, development, production or logistics projects;

(b) The term "proprietary technical information" means information which is technical in character, sufficiently explicit for use and has utility in industry, and which is known only to the owner and persons in privity with him and therefore not available to the public. Proprietary technical information may include, for example, inventions, drawings, know-how and data;

US BI-LATERAL AGREEMENT (Cont'd.)

and those in the other country having the right to use such patent rights and technical information: and

(b) In the absence of such existing relationships, through the creation of such relationships by the owner and the user in the other country;

Provided that, in the case of classified information, such arrangements are permitted by the laws and security requirements of both governments, and provided further that the terms of all such arrangements shall remain subject to the applicable laws of the two countries.

ARTICLE VIII

(a) "Technical information" as used in this agreement means information originated by or peculiarly within the knowledge of the owner thereof and those in privity with him and not available to the public.

(b) The term "use" includes manufacture by or for a contracting government.

NATO MULTI-LATERAL AGREEMENT (Cont'd.)

(c) The term "NATO organization" means the North Atlantic Council and any subsidiary civilian or military body, including international military headquarters, to which apply the provisions of either the agreement on the status of the North Atlantic Treaty Organization, national representatives and international staff signed in Ottawa on the 20th of September, 1951, or the protocal on the status of international military headquarters set up pursuant to the North Atlantic Treaty, signed in Paris on the 28th of August, 1952;

(d) The term "government or organization of origin" means the government party to this agreement or NATO organization first communicating technical information as being proprietary;

(e) The term "recipient" means any government party to this agreement or any NATO organization receiving technical information communicated as proprietary either directly by the government or organization of origin or through another recipient;

(f) The term "disclosure in confidence" means disclosure of technical information to a limited number of persons who undertake not to disclose the information further except under the conditions specified by the government or organization of origin;

(g) The term "unauthorised dis-

US BI-LATERAL AGREEMENT (Cont'd.)

NATO MULTI-LATERAL AGREEMENT (Cont'd.)

closure" refers to any communication of proprietary technical information which is not in accordance with the conditions under which it was communicated to the recipient;

(h) The term "unauthorised use" refers to any use of proprietary technical information made without prior authorisation or not in accordance with the conditions under which it was communicated to a recipient.

ARTICLE II

A. When for defence purposes, technical information is communicated by a government or organization of origin, to one or more recipients as proprietary technical information, each recipient shall, subject to the provisions of paragraph B of this article, be responsible for safeguarding this information as proprietary technical information which has been disclosed in confidence. The recipient shall treat this technical information in accordance with any conditions imposed and take appropriate steps compatible with these conditions to prevent this information from being communicated to anyone, published or used without authorisation or treated in any other manner likely to cause damage to the owner. If a recipient should desire to have the imposed conditions modified, this recipient shall, unless otherwise

US BI-LATERAL AGREEMENT (Cont'd.)

ARTICLE II

When, for defense purposes, technical information is supplied by one contracting government to the other for information only, and this is stipulated at the time of supply, the recipient government shall treat the technical information as disclosed in confidence and use its best endeavors to ensure that the information is not dealt with in any manner likely to prejudice the rights of the owner thereof to obtain patent or other like statutory protection therefor.

NATO MULTI-LATERAL AGREEMENT (Cont'd.)

agreed, address any request to this effect to the Government or organization of origin from which the proprietary technical information was received.

B. If a recipient ascertains that any part of the technical information communicated to it as proprietary technical information was, at the time of the communication, already in its possession or available to it, or was then or at any time becomes available to the public, the recipient shall, so far as security requirements permit, notify the government or organization of origin of that fact as soon as possible and if necessary make any appropriate arrangements with the latter for continuation of confidence, for maintenance of defence security and for return of documents.

C. Nothing in this agreement shall be considered as limiting any defence available to a recipient in any disagreement resulting from any communication of technical information.

(Article II of the Implementing Procedures for the NATO Agreement on the Communication of Technical Information for Defense Purposes (NATO Document AC/259-D/47; AC/94-D/150), defines the term "for information purposes" and sets forth, in some detail, procedures for marking information with restrictive legends. The Article further deals with oral

US BI-LATERAL AGREEMENT (Cont'd.)

NATO MULTI-LATERAL AGREEMENT (Cont'd.)

exchanges of technical information and the conditions under which the information may be communicated to a third party. Article III of the Implementing Procedures covers means for obtaining modification of restrictions on use or disclosure of information exchanged.)

(There is no article in the NATO agreement which is the equivalent of Article III of the bilaterals. Matters concerning the international filing of patent applications held in secrecy in the country of origin are covered by the NATO "Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for which Applications for Patents have been made" signed in Paris, 21 September 1960 and the corresponding Implementing Procedures.)

ARTICLE III

A. If the owner of proprietary technical information which has been communicated for defence purposes suffers damage through unauthorised disclosure or use of the information by a recipient or anyone to whom this recipient has disclosed the information, this recipient shall compensate the owner:

> When it is a government, in conformity with the national law of this recipient;

US BI-LATERAL AGREEMENT (Cont'd.)

ARTICLE III

When technical information made available, under agreed procedures, by one contracting government to the other for the purposes of defense discloses an invention which is the subject of a patent or patent application held in secrecy in the country of origin, similar treatment shall be accorded a corresponding patent application filed in the other country.

ARTICLE IV

(a) Where privately owned technical information—

(i) has been communicated by or on behalf of the owner thereof to the contracting government of the country of which he is a national, and

(ii) is subsequently disclosed by that government to the other contracting government for the purposes of defense, and is used or disclosed by the latter government without the express or implied con-

NATO MULTI-LATERAL AGREEMENT (Cont'd.)

When it is a NATO organization, unless otherwise agreed by the parties concerned, in conformity with the law of the country in which the headquarters of this organization is located.

Such compensation shall be made either directly to the owner or to the government or organization of origin if the latter itself compensates the owner. In the latter case, the amount to be paid by the recipient will not be affected by the amount of compensation paid by the government or organization of origin, unless otherwise agreed.

B. Recipients and the government or organization of origin, so far as their security requirements permit, shall furnish each other with any evidence and information available and accord other appropriate assistance to determine damage and compensation.

C. At the request of a government party to this agreement or a NATO organization concerned, an advisory committee composed solely of representatives of the govern-

US BI-LATERAL AGREEMENT (Cont'd.)

sent of the owner, the contracting governments agree that, where any compensation is paid to the owner by the contracting government first receiving the information, such payment shall be without prejudice to any arrangements which may be made between the two governments, regarding the assumption as between them of liability for compensation. The technical property committee established under article VI of this agreement will discuss and make recommendations to the governments concerning such arrangements.

(b) When, for the purposes of defense, technical information is made available by a national of one contracting government to the other government at the latter's request, and use of disclosure is subsequently made of that information for any purpose, whether or not for defense, the recipient government shall, at the owner's request, take such steps as may be possible under its laws to provide prompt, just and effective compensation for such use or disclosure to the extent that the owner may be entitled thereto under such laws.

ARTICLE VI

Each contracting government shall designate a representative to meet with the representative of the other contracting government to constitute a technical property com-

NATO MULTI-LATERAL AGREEMENT (Cont'd.)

ments and NATO organizations involved in the transaction may be created to investigate and examine evidence and report to the parties concerned on the origin, nature and scope of any damage. This committee may request the secretary general of the North Atlantic Treaty Organization to designate a member of the international staff to be a member of the committee as an observer or as a representative of the Secretary General.

US BI-LATERAL AGREEMENT (Cont'd.)

mittee. It shall be the function of this committee:

(a) To consider and make recommendations on such matters relating to the subject of this agreement as may be brought before it by either contracting government.

(b) To make recommendations to the contracting governments concerning any question, brought to its attention by either government, relating to patent rights and technical information which arises in connection with the mutual defense program.

(c) To assist, where appropriate, in the negotiation of commercial or other agreements for the use of patent rights and technical information in the mutual defense program.

(d) To take note of pertinent commercial or other agreements for the use of patent rights and technical information in the mutual defense program, and, where necessary, to obtain the views of the two governments on the acceptability of such agreements.

(e) To assist, where appropriate, in the procurement of licenses and to make recommendations, where appropriate, respecting payment of indemnities covering inventions used in the mutual defense program.

(f) To encourage projects for technical collaboration between and among the armed services of the

| NATO Multi-Lateral Agreement (Cont'd.) | US Bi-Lateral Agreement (Cont'd.) |
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| | two contracting governments and to facilitate the use of patent rights and technical information in such projects.<br>(g) To keep under review all questions concerning the use, for the purposes of the mutual defense program, of all inventions which are, or thereafter come, within the provisions of article V.<br>(h) To make recommendations to the contracting governments, either with respect to particular cases or in general, on the means by which any disparities between the laws of the two countries governing the compensation for or otherwise concerning technical information made available for defense purposes might be remedied. |
| D. Nothing in this article shall impair any rights that the injured owner may have against any government or NATO organization. | (No equivalent article.) |
| | ARTICLE VII |
| (There is no article of the NATO Agreement which is equivalent to Article VII of the bi-laterals. However, the Implementing Procedures to the NATO Agreement provide detailed instructions on the protection of proprietary information and sets forth the procedures whereby the Advisory Committee may investigate any claim concerning the improper use or disclosure of proprietary information.) | Upon request, each contracting government shall, as far as practicable, supply to the other government all necessary information and other assistance required for the purposes of—<br>(a) Affording the owner of technical information made available for defense purposes the opportunity to protect and preserve any rights he may have in the technical information; and<br>(b) Assessing payments and |

| NATO MULTI-LATERAL AGREEMENT (Cont'd.) | US BI-LATERAL AGREEMENT (Cont'd.) |
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| | awards arising out of the use of patent rights and technical information made available for defense purposes. |
| | ARTICLE V |
| (There is no article in the NATO agreement providing for the exchange of rights in patents. That Agreement does not involve the exchange of patent rights whether privately or government owned.) | When one contracting government, or an entity or agency owned or controlled by such government, owns or has the right to grant a license to use an invention and that invention is used by the other government for defense purposes, the using government shall be entitled to use the invention without cost, except to the extent that there may be liability to a private owner with established interests in the invention. |
| ARTICLE IV | |
| The governments parties to this agreement shall develop within the North Atlantic Council procedures for the implementation of this agreement. In particular these procedures shall contain provisions governing:<br>(a) The communication, receipt and use of proprietary technical information under this agreement;<br>(b) The participation of NATO organizations in the communication, receipt and use of proprietary technical information;<br>(c) The creation and operation of the Advisory Committee provided for in the Article III-C above;<br>(d) Requests for changes of conditions imposed on proprietary technical information, as envisaged by article II-A above. | (There are no provisions in the bi-laterals for the development of implementing procedures.). |

| NATO Multi-Lateral Agreement (Cont'd.) | US Bi-Lateral Agreement (Cont'd.) |
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| Article V | Article VIII |
| 1. Nothing in this agreement shall be interpreted as affecting security commitments between or amongst government parties to this agreement. | d. Nothing in this agreement shall contravene present or future security arrangements between the contracting governments. |
| 2. Each recipient shall accord to all proprietary technical information made available to it under the terms of this agreement at least the same degree of security as that technical information has been accorded by the government or organization of origin. | |
| Article VI | |
| 1. Nothing in this agreement shall prevent the governments parties from continuing existing agreements or entering into new agreements among themselves for this same purpose. | (There are no corresponding provisions in the bi-laterals.) |
| 2. Nothing in this agreement shall be interpreted as affecting the provisions of the NATO agreement for the mutual safeguarding of secrecy of inventions relating to defence and for which applications for patents have been made, signed in Paris on the 21st of September, 1960. | |
| Article VII | Article VIII |
| Nothing in this agreement shall apply to the communication or use of technical information relating to atomic energy. | c. Nothing in this agreement shall apply to patents, patent applications and technical information in the field of atomic energy. |

| NATO Multi-Lateral Agreement (Cont'd.) | US Bi-Lateral Agreement (Cont'd.) |
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| Article VIII | Article IX |
| A. The instruments of ratification or approval of this agreement shall be deposited as soon as possible with the government of the United States of America, which will inform each signatory government and the NATO secretary general of the date of deposit of each instrument.<br>This agreement shall enter into force 30 days after deposit by two signatory parties of their instruments of ratification or approval. It shall enter into force for each of the other signatory parties 30 days after the deposit of its instruments of ratification or approval. | (a) This agreement shall enter into force on the date of signature. |
| B. The North Atlantic Council will fix the date on which the present agreement will begin or will cease to apply to NATO organizations. | (None of the bi-lateral agreements apply to NATO Organizations.) |
| Article IX | Article IX |
| Any party may cease to be a party to this agreement one year after its notice of denunciation has been given to the government of the United States of America, which will inform the other signatory governments and the secretary general of the North Atlantic Treaty Organization of the deposit of each notice of denunciation. Denunciation shall not, however, effect obligations already contracted and the rights or | (c) This agreement shall terminate on the date when the mutual defense assistance agreement terminates or six months after notice of termination by either contracting government, whichever is sooner, but without prejudice to obligations and liabilities which have then accrued pursuant to the terms of this agreement. |

NATO MULTI-LATERAL AGREEMENT (Cont'd.)

prerogatives previously acquired by parties under the provisions of this agreement.

(Although the NATO Agreement makes no provision for review, there is such a provision for review of the Implementing Procedures.)

In witness whereof the undersigned representatives duly authorized thereto, have signed this agreement.

Done in Brussels this 19th day of October 1970 in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the government of the United States which will transmit a duly certified copy to the other signatory governments and to the secretary general of the North Atlantic Treaty Organization.

US BI-LATERAL AGREEMENT (Cont'd.)

ARTICLE IX

(b) The terms of this agreement may be reviewed at any time at the request of either contracting government.

In witness whereof the undersigned, being duly authorized by their respective governments, have signed the present agreement.